

**United States Department of Labor
Employees' Compensation Appeals Board**

J.P., Appellant

and

**DEPARTMENT OF THE NAVY,
COMMANDER, NAVY INSTALLATIONS
COMMAND, San Diego, CA, Employer**

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**Docket No. 21-0310
Issued: August 13, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On December 30, 2020 appellant filed a timely appeal from a December 3, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish that a traumatic injury occurred in the performance of duty on July 23, 2020, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 3, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On August 6, 2020 appellant, then a 64-year-old aircraft freight loader, filed a traumatic injury claim (Form CA-1) alleging that on July 23, 2020 he injured his right knee when he struck his right knee on a computer stand while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that he was in the performance of duty when his injury occurred. Appellant stopped work on July 23, 2020 and returned to work on July 27, 2020.

In a September 9, 2020 medical report, Dr. Arthur Wardell, a Board-certified orthopedic surgeon, evaluated appellant for a right knee injury that occurred at work on July 27, 2020 when appellant struck his knee on a computer console. He noted that appellant received a steroid injection on August 5, 2020 to treat the pain in his knee. Dr. Wardell also observed that appellant had preexisting asymptomatic osteoarthritis. On evaluation, he diagnosed a contusion of the right knee that aggravated appellant's preexisting asymptomatic osteoarthritis. Dr. Wardell ordered an x-ray scan of appellant's right knee and recommended that appellant undergo a course of physical therapy.

In a September 9, 2020 duty status report (Form CA-17), Dr. Wardell diagnosed a right knee contusion, aggravating his asymptomatic osteoarthritis. He released appellant to return to work as of July 29, 2020 with work restrictions. In an attending physician's report (Form CA-20) of even date Dr. Wardell diagnosed a right knee contusion aggravating his asymptomatic osteoarthritis in relation to a July 27, 2020 employment injury where appellant bumped his knee on a computer console. He checked a box marked "Yes" to indicate his opinion that appellant's condition was caused or aggravated by his employment activity.

In an October 7, 2020 medical report, Dr. Wardell reevaluated appellant's right knee and noted that appellant experienced a constant, aching pain. He diagnosed a contusion of the right knee aggravating his asymptomatic osteoarthritis and recommended that appellant continue his physical therapy treatment. In a Form CA-17 of even date, Dr. Wardell reiterated his diagnosis and recommended work restrictions. In an October 7, 2020 Form CA-20, he again reiterated his diagnosis and found that it was due to a July 27, 2020 employment injury where appellant bumped his right knee on a computer console. Dr. Wardell also checked a box marked "Yes" to indicate his opinion that appellant's condition was caused or aggravated by appellant's employment activity.

Appellant submitted physical therapy reports dated October 5 to 21, 2020 detailing treatment for his right knee condition.

In a development letter dated October 29, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

On October 21, 2020 appellant accepted a limited-duty assignment from the employing establishment.

Appellant submitted additional physical therapy notes dated October 27 to 29, 2020.

In a November 2, 2020 medical report, Dr. Wardell reiterated his diagnosis of a contusion of the right knee aggravating appellant's preexisting asymptomatic osteoarthritis and recommended that appellant continue his physical therapy treatment.

In a November 2, 2020 Form CA-17, Dr. Wardell again diagnosed a right knee contusion aggravating his asymptomatic osteoarthritis and recommended work restrictions. In a Form CA-20 of even date, he note his diagnosis was due to a July 27, 2020 employment injury and further checked a box marked "Yes" to indicate his opinion that appellant's condition was caused or aggravated by his employment activity.

Appellant submitted additional physical therapy notes dated November 2 to 5, 2020.

In a November 17, 2020 response to OWCP's development questionnaire, appellant explained that on July 23, 2020 he was carrying a box weighing approximately 30 pounds when he lost his footing on a wooden pallet, lunged forward and hit his right knee on the edge of a computer console outside of his office. He detailed his subsequent medical treatment and indicated that he did not sustain any other injury between the date of his injury and the date he reported his injury. Appellant insisted that he did not have any similar disability or symptoms prior to the July 23, 2020 employment incident.

Appellant attached a July 24, 2020 medical report in which he informed John Riffle, a physician assistant, that his right knee injury was not caused by a direct blow, crushing injury, puncture wound, twisting injury, or an incised wound. He also indicated that his injury occurred at home, reasoning that he had been walking a lot at home recently. Dr. Andrew Sellers, a Board-certified diagnostic radiologist, performed an x-ray scan of appellant's right knee that revealed moderate-to-severe tri-compartmental osteoarthritis and no acute fracture. Mr. Riffle diagnosed tri-compartmental osteoarthritis of the right knee.

In an August 5, 2020 medical report, Dr. Kevin Pinkos, a Board-certified orthopedic surgeon, evaluated appellant as a result of severe osteoarthritis in both of his knees. He noted that appellant had been previously seen in March 2019 to undergo treatment for his left knee symptoms, which resulted in great relief. Appellant presented seeking similar treatment for his right knee. Dr. Pinkos diagnosed bilateral primary osteoarthritis of the knees and administered a corticosteroid injection to the left knee. He prescribed pain medication and discussed surgical options.

In a November 11, 2020 medical note, Dr. Wardell indicated that he first evaluated appellant for his right knee pain in relation to the alleged July 23, 2020 employment incident on September 9, 2020. He diagnosed a right knee contusion, aggravating a preexisting asymptomatic osteoarthritis and attached copies of his medical records previously received in the case record.

By decision dated December 3, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as he described. It noted that the mechanism of injury alleged in the July 23, 2020 employment incident differed from the accounts of Dr. Pinkos and Mr. Riffle. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁴ that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁷ Fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.¹⁰ The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.¹¹ An employee's

³ *Supra* note 1.

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹¹ *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

statements alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that a traumatic injury occurred in the performance of duty on July 23, 2020, as alleged.

Appellant has not established the factual component of his claim as he has insufficiently explained how and where the claimed injury occurred.¹³ In his August 6, 2020 Form CA-1, he indicated that he injured his right knee on July 23, 2020 when he struck it into a computer stand. In his November 17, 2020 response to OWCP's development questionnaire, appellant explained that he was carrying a box weighing approximately 30 pounds when he lost his footing, lunged forward and struck his right knee on the edge of a computer unit outside of his office. However, in a July 24, 2020 medical report, appellant informed Mr. Riffle that his right knee injury was not caused by a direct blow, crushing injury, puncture wound, twisting injury, or an incised wound. He asserted that his injury occurred at home due to increased walking. In an August 5, 2020 medical report, Dr. Pinkos noted the purpose of the encounter was due to severe osteoarthritis in both of his knees. He noted that appellant had been previously seen in March 2019 to undergo treatment for his left knee symptoms. There was no mention of a traumatic injury.

The Board also notes inconsistencies in appellant's response to OWCP's development questionnaire and his description of the alleged July 23, 2020 employment incident. In his November 17, 2020 response to OWCP's development questionnaire, appellant asserted that he had no similar disabilities concerning his right knee. However, the medical evidence of record from Drs. Pinkos and Wardell clearly indicate that appellant was diagnosed with right knee osteoarthritis prior to the events of the alleged July 23, 2020 employment incident.

The Board finds that appellant's description of the incident in his Form CA-1 is inconsistent with his statements to his treating physicians. Appellant's varying description of the circumstances of his right knee injury do not establish a singular account of the mechanism of injury.¹⁴ Further, the history-of-injury he related failed to mention his history of osteoarthritis in his right knee. As appellant has not provided a consistent description of the alleged employment incident and the mechanism by which he sustained an injury, the Board finds that he has not met his burden of proof.¹⁵

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹² See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹³ *Supra* note 10.

¹⁴ *Id.*

¹⁵ *H.D.*, Docket No. 15-1698 (issued May 4, 2016).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that a traumatic injury occurred in the performance of duty on July 23, 2020, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board